

ESTABLISHED 1840.

MEMPHIS, TENN., THURSDAY, MAY 16, 1889.

VOL. XLIX--NO. 110

THE BILL

Small Load of Mustard Seed Fired.

Another Straight Tip Given Yesterday by The Appeal.

That Write of Ouster Against Judge DuBose in Chancery.

The Shot May or May Not Bring the Game to Bag.

At All Events, the Judge Doesn't Give Any Signs of Succumbing, and Makes a Brief But Characteristic Comment.

Yesterday morning THE APPEAL stated that a writ of ouster would be filed in the Chancery Court against Judge J. J. DuBose, Criminal Court Judge of this county.

THE APPEAL also gave an explanation or summary of the contents of the bill regarding which so much had been said.

The document is an unusual one in that such things are seldom seen and to young lawyers particularly, it will be interesting reading, as showing how such things are done. The text of the bill is here appended:

To the Hon. R. M. Estes, Chancellor, etc.

The State of Tennessee on relation of Andrew J. Harris, D. C. Slaughter, J. W. Levi, James Lee, Jr., C. F. Degarrie and S. A. Douglas, all citizens and residents of the county of Shelby, and of the State of Tennessee, respectfully show unto your honor that at the regular biennial election held in said Shelby County on the 5th day of August, 1888, at the time fixed by law in that behalf, the defendant Julius J. DuBose presented his name to the electors of this county, and was elected to the office of judge of the high and important office of judge of the Criminal Court of Shelby County.

That said Julius J. DuBose, after said election had been held, claimed to have received the majority of the votes cast in said election, and did enter upon the discharge of the duties of the office of judge of the Criminal Court of Shelby County, and upon said claim was thereupon commissioned to hold said office by the Governor of the State of Tennessee for the period of eight years from and after September 1, 1889.

That said Julius J. DuBose, on or about the first day of September, 1889, undertook to exercise the duties of the office of judge of the Criminal Court of Shelby County, and did enter upon the discharge of the duties of the office of judge of the Criminal Court of Shelby County, and upon said claim was thereupon commissioned to hold said office by the Governor of the State of Tennessee for the period of eight years from and after September 1, 1889.

That said Julius J. DuBose, before or at the time he entered upon the duties of said office, before D. C. Slaughter, a Justice of the Peace for said county, took the oath of office, which was filed and entered of record in said Criminal Court, in writing, in words and figures as follows, to-wit:

"I, Julius J. DuBose, do hereby swear that I will support the Constitution of the United States and of the State of Tennessee, and will administer justice without respect of person, and will impartially discharge all the duties incumbent upon me as a judge to the best of my ability, and I swear that I have not, directly or indirectly, given or knowingly carried a challenge, in writing or otherwise, to any person being a citizen of the State since the adoption of the Constitution in 1835, or aided or abetted therein since, and that I will, during my continuance in office, be guilty of neither of these acts."

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his right sleeve, which had fallen down and seemed to annoy him. When this operation was over Col. DuBose asked the gentlemen: "Are you ready?" to which both responded "ready." The order to fire was then given by DuBose. The first shot was fired by Brizzolari immediately upon the order being given. His adversary quickly discharged his pistol, the ball taking effect, as was supposed from Brizzolari's expression at the instant. He, however, recovered and fired a second time. Phelan also fired again, and Brizzolari in the act of shooting fell. The firing then ceased on the part of both. The seconds and surgeon of Mr. Brizzolari ran immediately to his assistance. Thereupon the second of Mr. Phelan approached and asked permission to leave the field. Said DuBose stated he would inquire into the condition of his principal and ascertain if he was able to continue the fight. Upon examination it was found that he was seriously wounded, and Col. DuBose then approached Mr. Phelan and said: "As your principal was badly wounded Mr. Phelan and friends might leave the field. Said account of the duel published in the *Public Ledger* was correct, and gave a true statement of the connection of the said J. J. DuBose with said duel. By reason of J. J. DuBose having acted as a second in the duel and aided in the fighting of said duel, by giving the word of command to the combatants and doing the other acts above mentioned he rendered himself an officer of honor or profit in the State of Tennessee, under the provisions of section 3, of article 9, of the Constitution of the State of Tennessee of 1870, which was promulgated and came in force on the 5th day of June, 1870. The said J. J. DuBose, by reason of so engaging in said duel and as aforesaid aiding and abetting the same was rendered incapable of holding the said office of judge of the Criminal Court of Shelby County, not only under constitutional provision, but also by the Statutes enacted by the Legislature and which were in force prior to the adoption of said Constitution of 1870, and have been in force ever since their enactment and under which no person is capable of holding any office or said office if he has been guilty of the aforesaid acts or any of them committed by the said DuBose at any time since the adoption of the Constitution of 1870. Said J. J. DuBose, although commissioned to fill said office, is in contempt of law incapable of being the judge of said Criminal Court of Shelby County, under the Constitution of the State of Tennessee, and under the Constitution of the State, enacted by the people, he was incompetent to hold or fill said office or to exercise any of the functions thereof. Said J. J. DuBose has been holding said office ever since about the 1st of September, 1889, and still assumes to hold the same. Said J. J. DuBose is hereby declared to be incapable of holding the said office, and exercises the said office of judge of the Criminal Court of Shelby County, Tenn. Said DuBose in accepting and assuming to discharge the duties of said office is an usurper, and is now usurping the functions of said office, and has been unlawfully receiving and enjoying the emoluments thereof.

Premises considered complainants pray that the said J. J. DuBose be made party defendant hereto, and that subpoena and all other proper processes may issue, and that he be required to answer the allegations of this bill under the corporal oath. It is prayed that said J. J. DuBose be adjudged not entitled to fill or hold said office of judge of the Criminal Court of Shelby County, and that it be adjudged that he has held and now holds the office unlawfully and is usurping the functions of the office, and that he be removed from said office and be enjoined from holding the same or exercising any of the rights or receiving any of the profits connected therewith or belonging thereto, and that he be enjoined from acting as judge of the Criminal Court of Shelby County, and that complainants may have such further relief as may be proper or necessary in the premises. And as duty bound your orators will ever pray.

A. J. HARRIS, D. C. SLAUGHTER, J. W. LEVI, JAMES LEE, JR., C. F. DEGARRIE, S. A. DOUGLAS.

The writ was submitted to Attorney-General Peters, and that officer took issue thereon to consider it. After a thorough examination of the law and an investigation of his duties in the premises the Attorney-General consented to it and added his reasons, as follows:

"The foregoing bill, having been submitted to me by the relation with the request and demand that I should officially assent to the bringing of the suit, I have very carefully examined the question of my duty in the premises. I have reached the conclusion that it is my duty to give such assent, upon the ground that the facts stated in the bill make out a prima facie case for redress, and upon the further ground that when a suit of this character is tendered and an individual relator secures the costs of court the law contemplates and requires that the Attorney-General should, as of course or of right, give his assent officially to the filing of the bill upon a proper showing of facts."

"In accordance with this view, I officially brought, over two years ago, a suit against Eep. W. H. Hagley on the relation of a citizen—in the case of State, etc., vs. W. H. Hagley, No. 6,273, R. D., of the Chancery Court of Shelby County, I therefore, as did in that case, file the foregoing bill on behalf of the State of Tennessee, and the information of the relations named therein, as I conceive it to be my duty to do. I do this officially, and simply in order that the relators or the public, if aggrieved, may have an opportunity of asserting their rights in court, where the defendant, Judge DuBose, may indicate his title to office, if the charges made against him are true or unfounded."

"Geo. R. Peters, Attorney-General. Memphis, Tenn., May 15, 1889."

When informed that the bill had been filed Judge DuBose nervously inquired what it contained.

"That you were one of the seconds in a duel some years ago," replied his informant in the last sentence.

"Humph!" ejaculated the Judge; "is that all? I thought perhaps they would allege something."

And he chuckled the satisfaction he suddenly experienced in the relief.

RUMBLINGS OF THE RAIL.

The Washburn Lines Sold.

CHICAGO, Ill., May 15.—The lines of the Washburn Railway east of the Mississippi River were sold before Judges Gresham and Jackson today to Messrs. Ashley and Joy, representing 99 per cent. of the bonds and acting in the interests of the Washburn Western Purchasing Committee, for \$10,550,000. The Washburn lines were first sold in four sections and then sold as a whole. The lines east of the river will, it is understood, be consolidated with the lines west

of the river, with headquarters at St. Louis. Messrs. Popper, Johnson, Purdy and Parsons represented the minority bondholders.

According to the decree of the United States Court for foreclosure and sale the four divisions were first to be put up separately and then the four sold as a unit, whichever should yield the largest amount to be accepted by the masters who were appointed to make the sale. These were Messrs. Buford Wilson, the majority, and Johnson committee, representing the minority of the bondholders, bid higher than the Joy committee for the first three divisions; but when it came to selling the property in a lump the Joy committee outbid its opponents with a price in excess of the aggregate \$14,000,000 for the divisions, and considerably in excess of the upset price as given above. The masters and attorneys then proceeded to Judge Gresham's room, where the work of preparing the master's report for the court's approval was begun.

The amount received secured the first and second mortgages in Ohio and the first on all the rest of the road. Said President Ashley, of the Washburn Western: "We will consolidate the Washburn Railway and Washburn Western by August 1. We will probably call the complete system the Washburn Railroad Company. We have issued and sold \$10,000,000 of five per cent. bonds on the consolidated system. Of this we will use \$11,741,000 to pay the first mortgage on the Washburn Western. We will also issue second mortgage bonds of \$14,000,000 on the lines east of the Mississippi \$20,000,000 bonds depending on the income and \$32,000,000 stock. The minority bondholders made a great mistake in not accepting 5 per cent. bonds for their 7 per cent. instead of compelling us to buy them out. The new bonds are already at a premium of 1 1/2 per cent. and I think they will sell better than the old ones. They not only lost money by their refusal, but compelled us to pay about \$400,000 more than it would otherwise have cost us."

Monthly Meeting of the R. & O.

BALTIMORE, Md., May 15.—The monthly meeting of the directors of the Baltimore & Ohio Railroad Company was held here today. J. T. O'Dell was appointed general manager of the entire system and W. W. Peabody was appointed general superintendent of the lines west of the Ohio River, with the same duties and power as he has heretofore exercised as general manager. He was also appointed agent of the Baltimore & Ohio at Chicago.

The statement of the earnings and expenses of last month show a falling off in the earnings of \$34,848 on the lines east of the Ohio River, an increase of \$9,372 on those west thereof, and a net decrease in the earnings of the entire system for this month of \$25,476.

For the seven months of the present fiscal year there is a falling off in the net earnings on the entire system of \$109,593. The report of the committee which has been investigating the affairs of the road for nearly a year past was adopted.

Pittsburg and Fort Wayne People.

PITTSBURGH, Pa., May 15.—At the annual meeting of the stockholders and bondholders of the Pittsburg, Fort Wayne & Chicago Railroad Company held here today, Messrs. L. H. Myers, E. P. Williams and Charles E. Speer, whose terms as directors had expired, were re-elected. Nearly 320,000 votes representing \$31,870,880 were cast, being the largest vote ever polled. The report of the board showed a net income for last year of \$9,842,113.09, less cost of operating and maintaining \$7,129,361, leaving a balance of \$2,712,752.90.

The lessee company paid the Fort Wayne Company a rental of \$1,188,908, leaving a deficit to the operating company of \$448,152.92.

The Big Four Consolidation.

CLEVELAND, O., May 15.—By agreement of attorneys the courts permitted the stockholders of the Cleveland, Columbus, Cincinnati & Indianapolis Railway Company to meet today and vote upon the consolidation of the Big Four system. The meeting was held in President Layne's office this morning at 6 o'clock. Directors Cox, of New York; John W. Williams, of Louisville; The Haggins, Pierre & Sons, of California; M. F. Dwyer and Judge Delmar.

Lead pencils clapped in the dainty fingers of ladies fair made notes of the facts. Carriages were arrayed in phalanxes about the course. Handsome women flattered from their seats in the galleries. Many were the colors of their favorite equine at their breasts. The crowd, warmed up by the first race, grew excited and yelled themselves hoarse as a preliminary to getting their throats in shape to do justice to the handicap. A magnificent floral offering, reported by Secretary McLaughlin, was in the form of a horseshoe, about five feet high, composed of the choicest flowers. Running around the shoe in the center was the inscription: "Brooklyn Handicap." It was destined for the winner. Three horses were scratched this morning, the names being, of Louisville, the Cavalier, Marauder and Niagara. Dense masses of people crowded the grand stand, filled the sidewalk, lined up to the fence surrounding the track, and, indeed, seemed to fill every available nook and corner.

In addition to the thirty bookmakers there were straight and nut machines, and one place \$25 nut machine. There was also betting in the American auction pools.

"The officers of the day were: Clarence McDowell, Col. Simmons and J. E. Brewster, judges. H. Connelison and J. Waldman, messers. Mr. J. F. Caldwell was the starter.

First Race—Five furlongs. Starters: Reveller, Brittan, St. Joseph, Persimmon, Salisbury, Cyclops, King Crab, Vance, Martha, Monson, Benedict, Jay F. Doe, Soney Lass. Monson was the first horse, and the black and red sleeves of the Manchester stable were first to flash around the track. Jimmie McLaughlin had a chill just before this race, but he determined on riding. There was a delay at the post, but after three trials they were given an excellent start. King Crab going away in the lead with Benedict, Brittan, Cyclops and Persimmon next, and the rest close up. Going up the back stretch Benedict took the lead, followed closely by Brittan and Cyclops. At the head of the home stretch Benedict was two lengths in the van, but Brittan immediately closed up on him, and half way home he had him collar. From that out there was only one in it—Brittan—be winning with ease in 1:19 1/2, but a second slower than the record. King Crab was a length before Reveller, third.

Second Race—One mile and a sixteenth. Starters: Brat, Ballast, Inspector, Con-

memors, Frank Ward, Marander, Tea Tray, Brother Ban, Ceawood. This was a beautiful race. Afternoon breakaway they were sent away in splendid style, with Brother Ban, Conmemora, Frank Ward and Inspector Ban in line and the others immediately behind. Frank Ward was a head before Ballast at the stand. The latter ran out and led from this out to the last jump, where Tea Tray, who had come up the stretch like a whirlwind, nipped the victory by a head, almost at the line, in 1:53 1/2. Ballast second, Brother Ban third. Mutuals \$87.50 straight.

With the closing of the second race anticipation and excitement over the greatest of events began to increase. The feminine portion of the enthusiasts were as excited as could well be, and piled their caps with questions about the horses.

This Race—Exposition stakes, half a mile. Starters: Eccelcolt, Belizarius (colt), Ballarat, Civil Service, Chaos, Banquet, Centaur, Flat Bush, Houston, Day, Phoebe, Homopathy, Bronze and Blue, Unadaga. The field was too large to be handled easily, and it was not until they had broken almost several times that they were dispatched on their way, with Houston in the lead, Centaur next and Chaos, the Eccol colt, heading the gang. Banquet made the running. The finish was a terrific one, and Banquet won by a length in 1:48 1/2. Belizarius second, an open length before Houston, third. Phoebe, Ballarat, the California horse, Flat Bush, the Eccol colt, Civil Service, Chaos, Bronze and Blue, Unadaga, Homopathy and Day followed in a rack. The mutuals paid \$84.50 straight and \$24.70 for place.

THE HANDICAP.

Fourth Race—The Brooklyn Jockey Club handicap, for three-year-olds and upward at \$100 each, or \$55 if declared out of the race, and an amount necessary to make the gross value of the stakes \$10,000, \$2,000 to second and \$1,000 to third. One mile and a quarter. Starters: Hanover, Taylor, 122, 8 to 5; Terra Cotta, McLaughlin, 120, 8 to 5; Elkwood, Martin, 120, 6 to 1; Prince Royal, Garrison, 120, 8 to 5; Exile, Hamilton, 120, 5 to 1; Richmond, Littlefield, 110, 10 to 1; Juggler, McCarthy, 97, 8 to 1. Auction pools: Terra Cotta \$280, Hanover \$360, Prince Royal \$440, field \$190.

Prince Royal was the first of the great horses to take the track. He was closely followed by Juggler and Terra Cotta, the last named with an amount necessary to make the gross value of the stakes \$10,000, \$2,000 to second and \$1,000 to third. One mile and a quarter. Starters: Hanover, Taylor, 122, 8 to 5; Terra Cotta, McLaughlin, 120, 8 to 5; Elkwood, Martin, 120, 6 to 1; Prince Royal, Garrison, 120, 8 to 5; Exile, Hamilton, 120, 5 to 1; Richmond, Littlefield, 110, 10 to 1; Juggler, McCarthy, 97, 8 to 1. Auction pools: Terra Cotta \$280, Hanover \$360, Prince Royal \$440, field \$190.

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EXILE EXCELS.

He Wins the Brooklyn Handicap.

The Great Terra Cotta, Hanover and Royal Defeated.

It Is Made in the Suburb Speed of 2:07 1/2.

This Is Within a Half Second of the Best Record.

Made Two Years Ago by Dry Monopole—The Stakes Amounts to \$10,000—It Was a Great Race and a Driving Finish.

The good thing on the Brooklyn Handicap failed to materialize yesterday. The Eastern sporting press could see nothing in the race but Hanover, and that usually reliable authority, the *Sporting World*, in last Monday's issue, said the Deyers had the race. But the wild, western *Appeal* cautioned its readers yesterday that Hanover had done nothing to justify his being made a favorite, and advised its readers to play Terra Cotta straight and Prince Royal for the place. Those who followed this advice are the richer for so doing, those who failed to do so will join the grand army of idiots who regularly play the good things that are chalked up on the board. The race as is elsewhere noted, was won by Exile, an 8 to 1 shot, with Prince Royal second, Terra Cotta third and Hanover nowhere. Terra Cotta probably carried five pounds overweight, as McLaughlin cannot train down to 122 pounds. Then, again, Terra Cotta may not have been fit as he will probably be the Suburban in run, and on which Hankins has his eye. At all events the Western crack beat the Eastern crack and the game is still pending at a high altitude.

AT BROOKLYN.

Exile Wins the \$10,000 Handicap Stake—The Other Results.

New York, May 15.—The Brooklyn Handicap has been run and won and Exile is the victor. Fifteen thousand people saw him win and not one of them will forget the grand sight to his dying day. After the third race, just before the great event, there was a rush to the book-makers' betting shed, which soon so filled that the men could hardly do business. Men clattered like mad and fought like wild animals for a chance to stake their money on their favorites. The wild mania to get a bet at any odds seemed to pervade the multitude. Had there been four times the number of bookmakers all would have been rushed to accommodate the tremendous number of betters. While the gamblers were playing their money other throngs visited the paddock to see the great horses groomed and saddled for the fray. When it was all over, and Exile's race was enlivened with the mammoth floral shoe brought to crown the winner, there were many cheers, but they were mixed with regrets that the ex-king of the turf had fared so badly.

A fine day for racing purposes could not have been had. The early arrivals at the track found that the course was in excellent condition, though a little damp underneath. It was a little dusty on top and many pronounced it fast, while a few thought it second or so slow. There was a tremendous crowd present. Not only did New York and Brooklyn pour forth multitudes, but even the city of Philadelphia sent large representations. Among the prominent gentlemen present were: Pierre Lorillard, August Belmont, President Withers, of Monmouth Park; Capt. Conner, Col. Simmons, President of the Louisville Racing Association; Senator Finckh of Louisiana; Secretary McLaughlin of the Kentucky Horse Show; M. F. Dwyer and Judge Delmar.

Lead pencils clapped in the dainty fingers of ladies fair made notes of the facts. Carriages were arrayed in phalanxes about the course. Handsome women flattered from their seats in the galleries. Many were the colors of their favorite equine at their breasts. The crowd, warmed up by the first race, grew excited and yelled themselves hoarse as a preliminary to getting their throats in shape to do justice to the handicap. A magnificent floral offering, reported by Secretary McLaughlin, was in the form of a horseshoe, about five feet high, composed of the choicest flowers. Running around the shoe in the center was the inscription: "Brooklyn Handicap." It was destined for the winner. Three horses were scratched this morning, the names being, of Louisville, the Cavalier, Marauder and Niagara. Dense masses of people crowded the grand stand, filled the sidewalk, lined up to the fence surrounding the track, and, indeed, seemed to fill every available nook and corner.

In addition to the thirty bookmakers there were straight and nut machines, and one place \$25 nut machine. There was also betting in the American auction pools.

"The officers of the day were: Clarence McDowell, Col. Simmons and J. E. Brewster, judges. H. Connelison and J. Waldman, messers. Mr. J. F. Caldwell was the starter.

First Race—Five furlongs. Starters: Reveller, Brittan, St. Joseph, Persimmon, Salisbury, Cyclops, King Crab, Vance, Martha, Monson, Benedict, Jay F. Doe, Soney Lass. Monson was the first horse, and the black and red sleeves of the Manchester stable were first to flash around the track. Jimmie McLaughlin had a chill just before this race, but he determined on riding. There was a delay at the post, but after three trials they were given an excellent start. King Crab going away in the lead with Benedict, Brittan, Cyclops and Persimmon next, and the rest close up. Going up the back stretch Benedict took the lead, followed closely by Brittan and Cyclops. At the head of the home stretch Benedict was two lengths in the van, but Brittan immediately closed up on him, and half way home he had him collar. From that out there was only one in it—Brittan—be winning with ease in 1:19 1/2, but a second slower than the record. King Crab was a length before Reveller, third.

Second Race—One mile and a sixteenth. Starters: Brat, Ballast, Inspector, Con-

memors, Frank Ward, Marander, Tea Tray, Brother Ban, Ceawood. This was a beautiful race. Afternoon breakaway they were sent away in splendid style, with Brother Ban, Conmemora, Frank Ward and Inspector Ban in line and the others immediately behind. Frank Ward was a head before Ballast at the stand. The latter ran out and led from this out to the last jump, where Tea Tray, who had come up the stretch like a whirlwind, nipped the victory by a head, almost at the line, in 1:53 1/2. Ballast second, Brother Ban third. Mutuals \$87.50 straight.

With the closing of the second race anticipation and excitement over the greatest of events began to increase. The feminine portion of the enthusiasts were as excited as could well be, and piled their caps with questions about the horses.

This Race—Exposition stakes, half a mile. Starters: Eccelcolt, Belizarius (colt), Ballarat, Civil Service, Chaos, Banquet, Centaur, Flat Bush, Houston, Day, Phoebe, Homopathy, Bronze and Blue, Unadaga. The field was too large to be handled easily, and it was not until they had broken almost several times that they were dispatched on their way, with Houston in the lead, Centaur next and Chaos, the Eccol colt, heading the gang. Banquet made the running. The finish was a terrific one, and Banquet won by a length in 1:48 1/2. Belizarius second, an open length before Houston, third. Phoebe, Ballarat, the California horse, Flat Bush, the Eccol colt, Civil Service, Chaos, Bronze and Blue, Unadaga, Homopathy and Day followed in a rack. The mutuals paid \$84.50 straight and \$24.70 for place.

THE HANDICAP.

Fourth Race—The Brooklyn Jockey Club handicap,